
DEPARTMENT OF STATE REVENUERevenue Ruling #2011-04 ST
September 2, 2011

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ISSUES

Sales and Use Tax – Products Transferred Electronically

A company ("Taxpayer") is seeking an opinion as to whether certain products transferred to customers electronically are subject to Indiana sales and use tax.

Authority: [IC 6-2.5-1-11.3](#); [IC 6-2.5-1-16.2](#); [IC 6-2.5-1-16.3](#); [IC 6-2.5-1-16.4](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-16.4](#); Streamlined Sales and Use Tax Agreement (Sept. 20, 2009)

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is in the business of developing social network games and providing access to the games via the Internet to its customers. In particular, Taxpayer further provides:

The social games are hosted on servers located outside of [Indiana]. The games cover various types of genres. For example, games include online poker that can be played without other users that access the same game while connected to the Internet. The Taxpayer's games are made available free of charge through social network websites. However, a customer may opt to enhance the game experience by purchasing "digital goods" to further playing time (e.g. additional poker chips) or specific digital goods for use in the games.

Whether the customer uses the game for free or pays for digital goods used in the games, the customer's sole means of accessing the game is through the Internet; the customer does not receive a download of the game (e.g. the game cannot be accessed "off-line"), nor does the customer receive any property in tangible form. In the case of mobile device applications, an application is provided free of charge that allows the mobile device to access the game hosted on the Taxpayer's servers using a mobile browser format; however, in order to access the game, the user must be connected to the Internet (i.e. the game cannot be accessed "off-line by the mobile device). In either situation, the game software is not downloaded onto a user's computer or wireless device; the game is accessed only through the Taxpayer's remote servers which are located outside of [Indiana]....

Regarding ownership of the digital goods, the customer is offered a limited, personal, revocable, non-transferrable, non-sublicenseable license to use the digital goods. The customer does not have any right or title in or to the digital goods.

Based on the foregoing, Taxpayer requests guidance as to whether its sales to end-user customers of digital goods for use within online social games, or use of the social games themselves, accessed via the Internet, are subject to Indiana sales and use tax when provided to customers located in Indiana.

DISCUSSION

Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), a sales tax is imposed on retail transactions made in Indiana. Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. A retail transaction is defined at [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration.

Also included in the definition of a retail transaction are specified digital products. [IC 6-2.5-4-16.4\(b\)](#) provides:

A person is a retail merchant making a retail transaction when the person:

- (1) electronically transfers specified digital products to an end user; and
- (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

Specified digital products, as defined by [IC 6-2.5-1-26.5](#), [IC 6-2.5-1-16.2](#), [IC 6-2.5-1-16.3](#), and [IC 6-2.5-1-16.4](#), currently include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Pursuant to [IC 6-2.5-4-16.4\(b\)](#), Indiana imposes sales and use tax only on specified digital products that are transferred electronically along with the right of permanent use that is not conditioned on continued payment by the purchaser. Products transferred electronically are defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products"—Effective January 1, 2010) of the Streamlined Sales and Use Tax Agreement ("SSUTA"—September 20, 2009), of which Indiana is a signatory, "A member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Pursuant to the same section of the SSUTA, "ancillary services", "computer software", and "telecommunication services" are excluded from the term "products transferred electronically."

In order to stay in conformity with the current SSUTA, Indiana may not impose sales tax on a product transferred electronically by basing the product's taxability on inclusion of the product in the definition of tangible personal property. It is important to note that "ancillary services," "computer software," and "telecommunication services" are not restricted by the phrase "product transferred electronically."

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products meet the definition of specified digital products, ancillary services, pre-written computer software, or telecommunication services. It is sufficient for the purposes of this ruling to note that the products at issue currently do not qualify as "specified digital products," "ancillary services" (as defined by [IC 6-2.5-1-11.3](#)), "pre-written computer software" (as defined by [IC 6-2.5-1-24](#)) or "telecommunication services" (as defined by [IC 6-2.5-1-27.5](#)). Accordingly, Taxpayer's sales to end-user customers of its digital goods for use within online social games, or use of the social games themselves, accessed via the Internet, are not subject to Indiana sales and use tax when provided to customers located in Indiana.

RULING

Taxpayer's products transferred electronically do not meet the current definition of specified digital products, ancillary services, pre-written computer software, or telecommunication services. Accordingly, Taxpayer's sales to end-user customers of its digital goods for use within online social games, or use of the social games themselves, accessed via the Internet, are not subject to Indiana sales and use tax when provided to customers located in Indiana.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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